

(1952) 11 MAD CK 0002

In the Madras High Court

Case No : Civil Revision Petition No. 525 of 1951

S. Rangaraju Naidu

APPELLANT

Vs

D.S. Kamesan

RESPONDENT

Date of Decision : 14-11-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Stamp Act, 1899 — Section 33, 33(1)

Citation : (1953) 66 LW 461

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : T.R. Srinivasan, for the Appellant; N.S. Srinivasan, for Govt. Pleader and B.V. Subramaniam, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—Mr. N.S. Srinivasan appearing for the learned Government Pleader raises a preliminary objection that Section 115,

Civil P. C. will not apply to the present case. What happened was that when a document came into the possession of the Court below a

Question was raised as to whether it was properly stamped. On that arguments were heard by the Subordinate Judge who finding that the

document had not been properly stamped impounded the same and sent it to the District Collector u/s 38(2), Stamp Act. In doing so, the learned

Judge did not give any definite finding as to the quantum of the stamp to be collected and left the decision on this matter to the Collector and if the

Collector cannot decide that question, the Subordinate Judge suggested, that the matter might be referred to the Chief Controlling Revenue

authority, namely, the Revenue Board, for referring the matter to the High Court u/s 57 of the Act. What is contended very strenuously by Mr.

Srinivasan is that the action of the Subordinate Judge in impounding the document and forwarding the same to the Collector with an accompanying letter does not amount to a decision of a case as contemplated u/s 115, Civil P. C. Prima facie this argument seems to be correct but on examining the matter and probing into the legal aspects of the forwarding of the document one has to say that the Subordinate Judge, when he came to the conclusion that the document in question has not been properly stamped has decided the case and that decision, so far as the Subordinate Judge is concerned, is final. It is not open to the party when once the Subordinate Judge reached that conclusion to get back the document or to proceed with the case as if the document has been validly tendered for purposes of letting in evidence. The finality that attaches to the view taken by the Subordinate Judge makes it a case decided by him. Therefore, it seems to me that apart from any authority, on first principles it can be said that the action of the Subordinate Judge is a case decided within the meaning of Section 115, Civil P. C. but the matter does not rest here.

2. Mr. T.B. Srinivasan for the petitioner has brought to my notice two decisions, one of the Lahore High Court and the other of the Nagpur High

Court. In -- "Uttamchand v. Permannand", A. I. R. 1942 Lah. 265 (A) Din Mohammad J. had to deal with a similar case. There also a document

which was produced before the Subordinate Judge was found to be insufficiently stamped and the Court determined the stamp duty payable

before impounding and forwarded the document to the Collector. This action of the Court was sought to be revised in revision and on the

objection taken that it was not a case decided within, the meaning of the provisions of Section 115, Civil P. C., the learned Judge held that "it is a

case decided within the meaning of Section 115, Civil P. C. inasmuch as the matter which was disputed, between the parties "qua" this aspect of

the case has, so far as the parties are concerned, been finally set at rest and no stage, will ever arise later at which this order of the Subordinate

Judge would be liable to be attacked".

3. The learned Judge, therefore, held that it was a case decided within the meaning of Section 115, Civil P. C. This decision has been followed

later by the Nagpur High Court in -- AIR 1943 97 (Nagpur) , where Vivian Bose J. following the decision in -- AIR 1942 Lah. 285 (A)", and

other cases came to the conclusion that the order of the lower Court impounding the document is revisable. In view of the decisions cited above I

have no hesitation in coming to the same conclusion. In the absence of any decision in Madras to show that the action of the Subordinate Judge is

not a case decided within the meaning of Section 115, Civil P. C. I have to conclude that the Subordinate Judge has finally decided the matter so

far as he was concerned. The preliminary objection is, therefore, overruled.

4. Now that the preliminary objection has been overruled the merits of the case have to be gone into. The petitioner in the revision petition is the

defendant in O. S. No. 8 of 1947 on the file of the Sub-Court, Salem. The suit was to recover a sum of nearly Rs. 2,00,000 with interest and the

allegations are that the plaintiff respondent conveyed to the defendant petitioner half the right in a patent for manufacturing a particular kind of

wood preservative, by means of an indenture dated 9-4-1945. This indenture was stamped in Mysore and according to the Stamp law in force

there the value of the stamp paper used was Its. 4687-8-0, whereas at that time if a similar document were to be executed in what was then British

India but now the Indian Union, the stamp duty would be more than Rs. 7400 and odd. According to Section 18, Stamp Act such instruments may

be stamped with proper stamp duty under the statute within three months after it has been first received in India. But no such thing was done.

Along with the plaint, a duplicate of the document in question was produced; but in the written statement the present petitioner raised an objection

in para. 15 that the deed of assignment is inadmissible and unenforceable in the Indian Courts as it is not validly stamped according to the law

prevailing in India. The plaintiff respondent, therefore, summoned the defendant for the production of the original which was in his possession. In

obedience to this summons issued by the Court, the defendant brought the indenture into Court and kept it in Court custody on 24-6-1949. It has

to be remembered in this connection that the defendant docs not want to enforce the document, whereas the plaintiff's title and Justification for the

claim is dependent upon the validity of the document in question. Therefore a compelling process from the Court resulted in the document coming

into its custody. Thereafter, the Subordinate Judge, as stated already, impounded the document and u/s 38(2), stamp Act sent the same to the

District Collector without giving a definite finding as to what should be the stamp duty to be collected on this instrument.

5. Mr. T.R. Srinivasan for the petitioner contends that the order impounding the document is illegal and "ultra vires" because the same was not

produced"" nor has it come into the possession of the Court in performance of its judicial functions and such being the case the provisions of

Section 33(1), Stamp Act cannot be attracted. Section 33(1) reads:

Every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of

police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it

appears to him that such instrument is not duly stamped, impound the same"".

The important portion of this section is ""is produced or comes in the performance of his functions."" According to the learned counsel production is

a voluntary act and not the result of any compulsion from a Court of law. In order that the document should be deemed to have been produced in

Court, it must be brought into the custody of the Court by a person of his own accord and as a result of his volition in order that he might use it for

his purpose or to secure some advantage by a legal process. Where, as a result of summons issued by Court, or seizure under a distraint or

attachment warrant, a document comes into the possession of the Court it cannot be held that the instrument in question has been produced; so

argues the learned counsel. For finding out the correctness of this argument, we should have a bird's eye view of the relevant provisions of the

statute in question. Section 3 defines what instruments are chargeable with duty and there is no doubt that the present document is chargeable with

duty in accordance with the provisions of that section. Section 17 lays down that all instruments chargeable with duty and executed by any person

in India except Part B States shall be stamped before or at the time of execution. As already stated, Section 18 lays down that if a document is

executed in the territory which has now become a Part B State, when it is first received in India it must be stamped within three months. With

regard to the liability of the person who has to pay the stamp duty, we have the provisions of Section 29(c) which say that in the case of a

conveyance, the stamp duty shall be borne by the grantee and here the stamp

duty, if the document had been executed in what was then British India, should have been paid by the defendant petitioner. Sections 33 and 38 deal with impounding. When we come to Section 44, we find that in certain cases a person paying duty or penalty may recover the same from the opposite party and Section 44(3) says that such amount may be included in the costs. Finally there is Section 48 which is to the effect that all duties and penalties under the Act can be collected as if they are land revenue. How the penalty ought to be charged is laid down in Section 35 where it is provided that it is open to the Court to levy a penalty to the extent of ten times the duty, so far as the Collector is concerned there is no such obligation.

6. In view of the above provisions of the Stamp Act, the action of the Court in impounding the documents and forwarding it to the Collector for finding out the stamp duty and ascertaining as to who is to pay the same would be correct if the document is produced in Court or comes into

Court in the performance of the Court's functions". Mr. B.V. Subramaniam for the respondent invites my attention to the distinction between

Section 33 and Section 35 of the Act. Whereas Section 33 contemplates the production or coming into possession of the Court of the document,

Section 35 comes into operation only when it is tendered in evidence. Section 33 is an all embracing one whereas Section 35 is limited to special

instances. What he argues is that the moment the petitioner, even if it as a result of a process of Court, brings the document and lets it into the

possession of Court, it should be deemed as if he has produced it. In any event, the document has come into the possession of the Court, in the

discharge of its judicial functions. In either event, according to the learned counsel for the respondent the provisions of Section 33 have been

attracted and it cannot be said that the order of the lower court is illegal.

7. Though there is paucity of recent cases of this Court on this aspect of the case, there are few cases of other Courts which have been brought to

my notice. The only Madras case so far as my attention has been drawn is that contained In -- "King Emperor v. Balu Kuppayan", 25 Mad 535

(C) where the word "comes" in Section 33 is held to have sufficiently wide connotation as to include the production of documents under a search

warrant. The facts of that case are as follows: There had been complaints made

to judicial authorities that offences under Sections 64(c) and 68(c), Stamp Act of 1899 were being committed and therefore the Magistrate issued a search warrant and when that was executed certain documents were seized and impounded u/s 33(2) of the Act. Before the High Court it was contended that when a document came into the custody of the Magistrate as a result of the execution of & search warrant, it did not come before the Magistrate in the performance of his functions within the meaning of Section 33(1). The contention was repelled by the learned Judges, Benson and Bhashyam Aiyangar JJ. with the remark:

The word "comes" is sufficiently wide to include the production of documents under a search warrant issued by the Magistrate.

I have not been shown any authority which dissents from this observation and I am, therefore, bound by it. It cannot be said that the document did not come into the possession of the Court. It was brought and handed over to an officer of court by the defendant as a result of a summons issued to him to produce the document. "'Comes into possession'" is a widely known legal term and its import is sufficiently wide as to include cases where documents are handed over. All that is required is that the custody of the document must rest with the Court. How it came into the custody is not a crucial factor. Therefore it is difficult to say in the present case that there is no operation of the phrase "'comes into possession'". Order 11, R. 14, Civil P. C. empowers the court at any time during the pendency of the suit to order the production by any party of such documents in his possession or power relating to any matter in question in such a suit and it is in pursuance to the provisions of this rule that the summons had been issued to the defendant to bring the document Into Court.

8. The next case cited before me is reported in -- "Sashishi Mohan Saha v. Kumud Kumar Biswas", AIR 1918 Cal 1026 (D). When a suit was filed before a District Munsif for the recovery of a sum of money due on what is known as hat-chita, the plaintiff produced in Court a book containing not only the hat-chita on which the suit was based but also a number of hat-chitas bound together as a book. The trial Court on examining the book found that not only the hat-chita in question but other hat-chitas also were not properly stamped. Therefore the entire book was impounded u/s 33, Stamp Act. The High Court held in revision that the

District Munsif had no Jurisdiction to impound the hat-chitas other than the one which formed the basis of the plaintiff's claim because they were not produced, nor came before him in the performance of his functions; and in doing so, the learned Judges Sir Asutosh Mookerjee and Cuming JJ. distinguished the case in 25 Mad 525 (C)". According to that decision the mere physical possession of the hat-chitas, which have no relevancy so far as the suit was concerned, would not be sufficient to hold that they were produced or came into possession in the discharge of the District Munsif's functions. The observations relevant to the present case are at pp.

1026-1027 and I may extract them hereunder:

The case for the petitioners is that they did not produce before the officer any hat-chita other than the one upon which their claim was founded.

The Munsif took action at a stage when there was no material to enable him to question the correctness of this allegation. Consequently, the case is

not covered by the first of the two alternatives mentioned in Section 33. Nor can we say that the other hat-chitas came before the Munsif in the

performance of his functions. In the performance of his functions as a judicial officer the only hat-chita which came before him at that stage was the

hat-chita. whereon the claim was founded. We cannot speculate whether if the trial had proceeded, the plaintiffs might not have possibly relied

upon the other hat-chitas in support of their case. If they had done so, it could well as maintained that those hat-chitas were produced before the

Munsif or came before him in the performance of his functions. But that stage was never reached. In our opinion, on the materials placed before us,

it is impossible to say that the Munsif had jurisdiction to impound the hat-chitas other than the one which formed the basis of the claim. Reference

has been made by the Senior Government Pleader to the case of 25 Mad 525 (C)" which is clearly distinguishable. There a search warrant was

issued by a Magistrate with a view to the discovery of a register kept by the accused, containing documents not stamped in accordance with the

provisions of the Stamp Act. The register was seized in the course of the search and brought in the Court. It is clear that the register was produced

before the Magistrate or came before him in the performance of his functions as a Magistrate.

It is clear from the passage quoted above that with reference to the hat-chita

which formed the subject matter of the particular suit, the learned

Judges were of opinion that it came into the possession of the Court in the performance of its judicial functions, though it is doubtful whether at that

stage it might be said that there was any production of the other hat-chitas.

9. As against these two cases other decisions bearing on the question regarding the meaning of the expression ""produced or comes into

possession"" have been relied upon. In -- "Thakardas v. Emperor", AIR 1932 Lah 495 (E) a Full Bench, of the Lahore High Court, on a reference

to It by the Financial Commissioner, held that where, a Sub Registrar registered a document as a deed of dissolution and it was later on found by

the Registrar that it should be stamped and registered as a deed of partition and he directed the party to produce the document, and holding that it

was not duly stamped made a reference to the Collector who held that the document was a deed of partition and called upon the executants to

make good the deficiency in stamp together with the penalty, that the Registrar was not acting in the performance of his functions In requiring the

production of the document and therefore the document was neither produced nor came into the possession of the Registrar in the performance of

his functions. This decision makes it clear that mere custody is not sufficient to attract the operation of Section 33(1), Stamp Act.

10. That the person presenting the document in Court must be the person legally liable to pay the deficient stamp duty is decided by another Pull

Bench of the Lahore High Court in --"Mohamed Hussain v. Emperor", AIR 1940 Lah 315 (F). The person who was liable to be charged with

stamp duty had died and the document insufficiently stamped was produced by one of his sons in a civil suit. In that case the learned Judges held

that the son cannot be made liable to pay the penalty. Though this decision does not explain the meaning of the phrase ""produced in Court or

comes into possession"" it is useful in this respect viz., that the duty can be levied only from the person liable initially to pay the same. We do not

think that this decision would carry the case any further at all.

11. Jai Lal J. in -- "Ujjal Singh Sundarsing v. Ahmed Yarkhan", AIR 1935 Lah 985 (G) held that mere presentation of a document or its

transliteration without any attempt to prove it or without an attempt to tender it formally in evidence does not amount to production of the

document before the person concerned nor does the document under such circumstances come before the person concerned in the performance

of his functions so as to attract the provisions of Section 33, Stamp Act. This decision is in favour of the petitioner's contention. But the learned

Judge does not refer to any authority in support of his conclusion. Observations of this Court in 25 Mad 525 (C) have not been referred to in this

case. The trend of decisions in Lahore seems to be that mere presentation is not enough in order to attract the operation of Section 33. In AIR

1942 Lah 265 (A)" there are observations of a similar nature. Din Mohammad J. Interprets the word ""produced"" in Section 33 as produced in the

ordinary course of law and not produced under compulsion. Therefore if the document is produced by a party as a result of a process issued by

the Court it cannot be said that he has produced it unless he tenders it in evidence and wants to sue it for his benefit. The learned Judge "further

goes on to add that if compulsory production can be understood as production within the meaning of the section, then it will be competent for a

Court to conduct a search in the house of a party and seize all documents insufficiently stamped for the purpose of impounding the same. Such

being the case it is highly improper for a Court to compel a party to produce an original document with a view to impound because the Court has

been informed that it is Insufficiently stamped. The facts of this case show that the original document was compelled to be produced into Court by

the Subordinate Judge before it was impounded. Here there was no compulsion but a voluntary presentation. In a more recent case -- "Harjimal &

Sons v. H.S. Palta & Sons", AIR 1947 Lah 319 (H), a single Judge of the Lahore High Court was of the opinion that if a party simply presented a

document in Court it cannot be said that it is production of the document as there was no attempt to tender it in evidence and where one of the

parties does not issue a notice to the other party to admit or deny such a document and the Court "suo motu" and for its own facility calls upon the

parties to admit or deny the documents produced by the other party, this act of the Court cannot be regarded as an implied tender by the party of

the document in evidence. In such a case the party who presents the document cannot be called upon to pay the stamp duty and penalty, on the

document if he is not otherwise the person by whom the stamp duty is payable under the Act. It seems to me that the result of the three Lahore

case referred to above is that mere bringing into Court of a document would not be sufficient to make it a production. In order that there should

be production it must be with the object of tendering it in evidence and using it for the benefit of the party himself.

12. An instructive case in point is to be found in AIR 1943 97 (Nagpur) ", which contains observations helpful for deciding the present case.

Vivian Bose J. was of the opinion that the word "produced" has a technical meaning and means either produced in response to a summons or

produced voluntarily for some judicial purpose such, for instance, as evidence. A document which falls accidentally or incidentally into a Judge's

hand cannot be said to be produced. The word "produce" carries with it, when used in this connection, a mental element. The mere physical act of

production is not enough when there is no intention to "produce". The learned Judge, therefore, held that when a party who was asked to produce

one document produces another by mistake and hands it over to the Court and it is found that the mistaken document is insufficiently stamped it

does not come before the Judge in the performance of his functions, The principle underlying this Judgment is that if a party as a result of the

summons produces the document, it must be deemed to be produced within the meaning of the section. The observations of the learned Judge

cannot be said to be exactly in concurrence with the views expressed in the Lahore cases.

13. A consideration of these authorities leads me to the conclusion that a mere handing over of a document, even if it is as a result of a summons

from Court, cannot be said to be production. There must be a volition on the part of the person bringing it to Court to use it for some purpose. The

mechanical act of carrying the document as a result of an order of Court and handing it over to an officer of Court would not be production. But

such an act would come within the meaning of the term "comes before the Court in the performance of its judicial functions" as laid down in 25

Mad 525 (C)." In the present case it cannot be said that the document has not come before the Court in performance of its functions, though it

may be that it has not been produced by the petitioner. Mr. T.R. Srinivasan for the petitioner contends that the letter forwarding the document to

the Collector has decided that the production was by the petitioner. I do not think that there has been any decision by the lower Court as to

whether the document was produced by the defendant. The question as to who was liable to pay the penalty has been left undecided. It is open to the collector, or to the Revenue board, to decide which party is liable to pay the penalty, and such being the case, I cannot say that the liability of any of the parties has been finally determined in these proceedings. With these observations the civil revision petition is dismissed, but in the circumstances without any order as to costs.